

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION STUDENT-  
ATHLETE CONCUSSION LITIGATION**

MDL NO. 2492

Master Docket No. 13-cv-09116

Judge John Z. Lee

Magistrate Judge M. David Weisman

**SECOND MOTION FOR LEAVE TO PAY  
NOTICE PROGRAM EXPENSES FROM THE SETTLEMENT FUND**

Settlement Class Counsel respectfully requests that the Court grant leave to the Program Administrator to pay Notice Program expenses from the Settlement Fund in the amount of \$882,274.56 (\$866,503.71 in administrative costs and expenses plus \$15,770.85 in sales tax). The NCAA does not oppose this motion.

In support thereof, Settlement Class Counsel states as follows:

1. On July 22, 2019, Gilardi submitted an invoice to Settlement Class Counsel for \$882,274.56 in connection with implementation of the Notice Program approved by the Court.

*See Exhibit A to 7/22/19 Christman Decl. (Invoice US\_GIHL1427082).*

2. The invoice requests payment for direct notice and administrative costs incurred for the period June 1, 2017 through January 31, 2019. 7/22/19 Christman Decl., ¶ 2.

3. Pursuant to the Court's instructions, Gilardi has demonstrated that the costs "are in line with the projections addressed in" the Second Declaration of Rachel Christman Regarding Notice Program Expenses filed March 3, 2017 (Dkt. 365-1), except where the scope of work exceeded initial projections as set forth in detail below. 7/22/19 Christman Decl., ¶ 2.

4. A number of discounts have been applied to various categories and the total amount discounted is \$104,398.25. 7/22/19 Christman Decl., ¶ 2. *See also id.* at ¶¶ 6, 7.a, 7.b, 7.e, 7.j, 7.n, 7.o, 7.p, 7.u, 7.v, 7.w, 8.b, 8.c, 8.f, 9.

**A. Costs Addressed in the March 2017 Christman Declaration.**

5. Ms. Christman outlines each category of costs incurred against the projected costs as follows:

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
Case Management System Maintenance	\$1,893.75 (¶ 13.a)	\$675.00 (¶ 3.a)	\$1,218.75 (reflecting discount of \$4,164.25 to reach budgeted cost) (¶ 7.a)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.a)	There will be no further billing in this category. (¶ 7.a)
Format Documents	\$51.25 (¶ 13.b)	\$75.00 (¶ 3.b)	\$0 (reflecting discount of \$1,591.00 to reach budgeted cost) (¶ 7.b)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.b)	There will be no further billing in this category. (¶ 7.b)
Staff Hours Processing Data Files	\$14,860.00 (¶ 13.d)	\$3,600.00 (¶ 3.c)	\$23,959.00 (¶ 7.c)	The actual expenses are <i>over</i> the budgeted amount. (¶ 7.c)	There will be no further billing in this category (¶ 7.c)
Second and Third Round Email Notice	\$14,449.58 (12.a)	N/A	\$18,936.31 (¶ 7.d)	The actual expenses are <i>over</i> the budgeted amount. (¶ 7.d)	There will be no further billing in this category. (¶ 7.d)
Second Round Email Notice – Email	\$450.00 (¶ 12.b)	\$275.00 (¶ 3.e)	\$175.00 (reflecting a discount of \$1,592.00	The actual expenses (after discount) are <i>at</i>	There will be no further billing in this category. (¶ 7.e)

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
Campaign Management			to reach budgeted cost) (¶ 7.e)	the budgeted amount. (¶ 7.e)	
Second and Third Round Email Notice – Track Email Bouncebacks	\$250.00 (¶ 12.c)	\$0	\$250.00 (reflecting a discount of \$125 to reach budgeted cost) (¶ 7.f)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.f)	There will be no further billing in this category. (¶ 7.f)
Second Round National Change of Address (“NCOA”) Update	\$5,153.00 (¶ 9.d and 12.d)	\$3,462.00 (N/A)	\$1,691.00 (¶ 7.g)	The actual expenses are <i>at</i> the budgeted amount. (¶ 7.g)	There will be no further billing in this category. (¶ 7.g)
Third and Subsequent Round Postcard Mailing – Print Costs	\$52,551.07 (¶ 12.e)	\$137.20 (¶ 3.f)	\$56,948.92 (¶ 7.h)	The actual expenses are <i>over</i> the budgeted amount as the NCAA member institutions provided more usable mailing addresses than anticipated. (¶ 7.h)	There will be no further billing in this category. (¶ 7.h)
Third and Subsequent Round Postcard Mailing – Postage Costs	\$480,466.88 (¶ 12.g)	\$1,254.40 (¶ 3.g)	\$520,675.84 (¶ 7.i)	The actual expenses are <i>over</i> the budgeted amount as the NCAA member institutions provided more usable mailing addresses than	There will be no further billing in this category. (¶ 7.i)

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
				anticipated. (¶ 7.i)	
Third and Subsequent Round Postcard Mailing – Print Production	\$800.00 (¶ 12.f)	\$200.00 (¶ 3.h)	\$600.00 (reflecting a discount of \$550.00 to reach the budgeted cost) (¶ 7.j)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.j)	There will be no further billing in this category. (¶ 7.j)
RUM Searches	\$74,005 (¶12.i)	\$0	\$52,894.00 (¶ 7.k)	Gilardi is currently under-budget in this category by \$21,111.10 (¶ 7.k)	There will be no further billing in this category. (¶ 7.k)
RUM Remails – Print Costs	\$14,616.03 (¶ 12.j)	\$0	\$16,008.32 (¶ 7.l)	The actual expenses are <i>over</i> the budgeted amount as the RUM Searches on averaged produced 7% higher than standard results, causing Gilardi to re-mail more pieces than anticipated. (¶ 7.l)	There will be no further billing in this category. (¶ 7.l)
RUM Remails – Postage Costs	\$62,904.42 (¶ 12.k)	\$0	\$68,896.58 (¶ 7.m)	The actual expenses are <i>over</i> the budgeted amount due to the higher than anticipated return on RUM searches. (¶ 7.m)	There will be no further billing in this category. (¶ 7.m)

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
Staff Hours Performing RUM & Remail Services	\$2,000.00 (¶ 12.l)	\$832.00 (¶ 3.j)	\$1,168.00 (reflecting discount of \$8,984.00 to reach budgeted cost) (¶ 7.n)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.n)	There will be no further billing in this category. (¶ 7.n)
Website Maintenance: Two Websites	\$2,500.00 (¶ 13.f)	\$375.00 (¶ 3.k)	\$2,125.00 (reflecting discount of \$250.00 to reach budgeted cost) (¶ 7.o)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.o)	There will be no further billing in this category (¶ 7.o)
Server Space Rental: Settlement Website	\$250.00 (¶ 13.g)	\$200.00 (¶ 3.l)	\$50.00 (reflecting discount of \$950.00 to reach budgeted cost) (¶ 7.p)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.p)	There will be no further billing in this category. (¶ 7.p)
Server Space Rental: NCAA Upload Site	\$200.00 (¶ 13.h)	\$200.00 (¶ 3.m)	\$150.00 (¶ 7.q)	The actual expenses are <i>over</i> the budgeted amount due to extensions of the timeline for this case to accommodate NCAA Institutions. (¶ 7.q)	There will be no further billing in this category. (¶ 7.q)
Project Management	\$59,900.00 (¶ 13.c)	\$7,175.00 (¶ 3.n)	\$15,750.00 (¶ 7.r)	The actual expenses are <i>under</i> the budgeted amount. (¶ 7.r)	Gilardi anticipates further billing in the amount of \$10,000.00. (¶ 7.r)

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
Opt-Out/Objection Processing	\$3,250.00 (¶ 13.i)	\$2,325.00 (¶ 3.o)	\$3,500.00 (¶ 7.s)	The actual expenses are <i>over</i> the budgeted amount because Gilardi received a greater number of requests for exclusion than anticipated. (¶ 7.s)	There will be no further billing in this category. (¶ 7.s)
Correspondence Processing	\$2,883.00 (¶ 13.j)	\$75.00 (¶ 3.p)	\$6,431.00 (¶ 7.t)	The actual expenses are <i>over</i> the budgeted amount due to the actual time necessary to process and respond to the higher than expected volume of both emailed and mailed correspondence from Class Members. (¶ 7.t)	Gilardi anticipates an additional \$500 will be necessary to respond to future Class Member inquiries through the Effective Date. (¶ 7.t)
Weekly Statistics Reporting	\$1,250.00 (¶ 13.k)	\$450.00 (¶ 3.q)	\$800.00 (reflecting discount of \$3,325.00 to reach budgeted cost) (¶ 7.u)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.u)	There will be no further billing in this category. (¶ 7.u)
Declarations	\$2,500.00 (¶ 13.l)	\$1,675.00 (¶ 3.r)	\$825.00 (reflecting discounts of \$6,150.00 to reach the	The actual expenses (after discount) are <i>at</i>	There will be no further billing in this category. (¶ 7.v)

Category	Projected Costs (3/3/17 Christman Decl.)	Previous Costs Billed (8/7/17 Christman Decl.)	Current Costs (7/22/19 Christman Decl.)	Whether the Actual Expenses Are Under, At, or Over the Budgeted Amount	Expected Further Billing In Category (7/22/19 Christman Decl.)
			budgeted cost (¶ 7.v)	the budgeted amount. (¶ 7.v)	
Telephone Support: Ongoing Script Management	\$750.00 (¶ 13.m)	\$150.00 (¶ 3.s)	\$600 (reflecting discount of \$6,150.00 to reach the budgeted cost) (¶ 7.w)	The actual expenses (after discount) are <i>at</i> the budgeted amount. (¶ 7.w)	There will be no further billing in this category. (¶ 7.w)
IVR Line Charges; IVR Transfer Fee; Staff Hours Providing Phone Support	\$7,935.01 (¶ 13.n)	\$17,835.50 (¶ 3.t)	\$32,207.94 (¶ 7.x)	The actual expenses are <i>over</i> the budgeted amount due to higher than anticipated call volume in this case. (¶ 7.x)	Based on current call trends, Gilardi anticipates billing for an additional 1,000 IVR minutes, with 600 minutes of live operator time, resulting in an additional \$180.00 in IVR Line Charges, \$108.00 in IVR Transfer Fees and \$750.00 in Staff Hours Providing Phone Support. (¶ 7.x)
Long Form Notice Requests	\$2,490.00 (¶ 13.o)	\$0	\$1,166.65 (reflecting discounts of \$1,164.00)	Gilardi is currently under-budget for both Print and Postage costs by \$1,323.35 (¶ 7.y)	Gilardi is currently under-budget for both Print and Postage costs by \$1,323.35 and will not bill beyond this remaining amount of budgeted costs. (¶ 7.y)

**B. Additional Outreach to Frostburg, Residual and Remaining Class Members.**

6. In addition, Gilardi seeks reimbursement for additional outreach to certain class members because such groups had not been included in Gilardi's three prior rounds of Notice outreach through mailed notice. 7/22/19 Christman Decl. ¶ 8.

7. Following the Court's November 13, 2018 (Dkt. 481), March 9, 2018 (Dkt. 498), and September 17, 2018 (Dkt. 527) orders, Gilardi performed outreach to Frostberg, Residual and Remaining Class Members. 7/22/19 Christman Decl. ¶ 8.

8. Ms. Christman outlines each category of additional outreach costs incurred for which Gilardi seeks reimbursement as follows:

Category	Current Costs (7/22/19 Christman Decl.)	Explanation of Costs (7/22/19 Christman Decl.)
Email Notice	\$1,033.64 (¶ 8.a)	When combined with the \$18,936.31 for Second and Third Round Email Notice addressed in Paragraph 7.d above, Gilardi is over budget in this category by \$5,520.38. As this overage is due to volume in excess of the originally anticipated amount, this cost has not been discounted. (¶ 8.a)
Postcard Mailings – Print Costs	\$2,722.72 (¶ 8.d)	The postcard print costs for the Frostburg, Residual, and Remaining classes were billed at the same rate as the three prior rounds of postcard printing described above. When combined with the \$56,948.92 for Third and Subsequent Round Postcard Mailings addressed in Paragraph 7.h above, Gilardi is over budget in this category by \$7,257.78. As this overage is due to volume in excess of the originally anticipated amount, this cost has not been discounted. (¶ 8.d)
Postcard Mailings – Postage Costs	\$24,893.44 (¶ 8.e)	The postage costs for the Frostburg, Residual and Remaining classes were billed at the same rate as the three prior rounds of postage described above. When combined with the \$520,675.84 addressed in Paragraph 7.i for Third and Subsequent Round Postcard Mailings, Gilardi is over budget in this category by \$66,356.80. As this overage is due to volume in

Category	Current Costs (7/22/19 Christman Decl.)	Explanation of Costs (7/22/19 Christman Decl.)
		excess of the originally anticipated amount, this cost has not been discounted. (¶ 8.e)

**C. Costs Addressed in the Motion for Extension to Notify Class of Adjusted Timeline.**

9. Finally, Gilardi anticipated billing additional costs related as noted in the Motion for Extension (Dkt. 366) as follows: (1) \$200 to post revised Settlement deadlines on the Settlement Website and include the dates on the second round of direct notice, and (2) \$15,000 to directly notify Settlement Class Members of the revised deadlines via email. 7/22/19 Christman Decl. ¶ 10.

10. The email notice of the extended timeline took place on June 20, 2017. 7/22/19 Christman Decl. ¶ 10.

11. Gilardi seeks payment of \$15,200.00 in costs incurred providing notice of revised deadlines to the Settlement Class Members. 7/22/19 Christman Decl. ¶ 10.

12. The NCAA does not oppose this motion.

13. Settlement Class Counsel certifies that the settlement expenses are necessary for the purpose of a just and efficient settlement of this case.

WHEREFORE, Settlement Class Counsel respectfully requests approval for payment of Gilardi's July 22, 2019 invoice from the Fund in the total amount of \$882,274.56.

Date: September 27, 2019

Respectfully submitted,

By: /s/ Steve W. Berman

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on September 27, 2019, a true and correct copy of the foregoing was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Steve W. Berman  
Steve W. Berman